

**STATE OF NEW HAMPSHIRE  
EXECUTIVE BRANCH ETHICS COMMITTEE**



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John E. Blair, Secretary

Patricia B. Quigley  
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**Advisory Opinion**

**2008-003**

**Question Presented**

May a member of an executive branch licensing board use his or her government title for commercial purposes, while that person is employed by, or in an appointed position for, the state?

**Summary Answer**

No. If the purpose or effect of the advertisement is to promote a commercial business, the use of one's governmental position for commercial purposes to gain an advantage in the marketplace not available to others constitutes a misuse of position in violation of RSA 21-G:23 (supp. 2007).

**Facts**

An individual who serves on an executive branch licensing board advertises his or her personal business in a newspaper. The advertisement includes the individual's picture, business title, and executive branch title.

**Legal Authority**

RSA 15-B:2; RSA 21-G:21, II-a; RSA 21-G:23; RSA 21-G:25.

**Analysis**

RSA 21-G:23 II, prohibits any "executive branch official" from using "his or her position with the state to secure privileges or advantages for himself or herself, which are not generally available to governmental employees . . . ." The term "executive branch official" includes "any person, including but not limited to a . . . volunteer, who conducts state business on behalf of any agency." RSA 15-

B:2, IX; RSA 21-G:21, II-a. The term agency includes any executive branch board or commission. RSA 15-B:2, 1. Thus, a member of a licensing board would be considered an executive branch official for purposes of RSA 21-G:23, II.

The legal prohibition set forth in RSA 21-G:23, II, “is intended to prevent individuals from using the authority and/or prestige of their government positions to further their personal interests. . . .” Executive Branch Ethics Committee Advisory Opinion 2007-004. If the purpose or effect of the advertisement is to promote a commercial business, the use of one’s governmental position for commercial purposes to gain an advantage in the marketplace not available to others constitutes a misuse of position in violation of RSA 21-G:23 (supp. 2007).

The Committee is of the opinion that by including his or her government title in an advertisement for a personal business, the executive branch official is using the prestige of the position to enhance his or her business image in the marketplace, and thus to further personal business interests. This type of business advantage is not available to, or even applicable to, most government employees. Accordingly, it is prohibited by statute.

This prohibition under RSA 21-G:23, II, does not extend to the use of a government title for commercial purposes after the executive branch official no longer holds the position, as it applies only to individuals who presently hold office in, or are employed by, the state. *See* 21-G:21, II-a (“executive branch official” means a person who holds an executive branch office).

Nothing in this opinion is intended to prohibit an executive branch official from including his or her executive branch position in resumes, biographies, or other documents that describe an individual’s expertise in an area of practice. This opinion is limited to the use of a government title in direct advertisements designed to solicit business where the purpose or effect is to promote a commercial business. Indirect advertising, such as the posting of biographies on a business Internet site, is not prohibited.

#### Conclusion

While holding a public office, an executive branch official may not use his or her government title or position for commercial purposes.

This Advisory Opinion is issued by the Executive Branch Ethics Committee on December 3, 2008 pursuant to RSA 21-G:30, I (c).



Chairman, Deborah J. Schachter



Vice Chairman, Dale S. Kuehne

Secretary, John E. Blair



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